

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT 57 KUJE ABUJA
THIS 29TH DAY OF MAY 2025
BEFORE HIS LORDSHIP: HON. JUSTICE ODUNAYO O. BAMODU, mni

SUIT NO. FCT/HC/CV/265/2025

BETWEEN

DR. ABIODUN MICHAEL AROKODARE.....CLAIMANT

AND

OYINOLA AJAYI.....DEFENDANT

REPRESENTATION

Chibuike E. Soronnadi Esq, with Peace Chukwu Esq, for the Claimant.

JUDGMENT

INTRODUCTION

The Claimant by an Originating Motion dated and filed on the 28th of January 2025 and brought pursuant to Order 2 Rule 6 of the High Court of the Federal Capital Territory (Civil Procedure) Rules, 2018 sought the following reliefs:

1. An order of this Honourable Court compelling the Defendant/Respondent to remove the Claimant/Applicant's name "AROKODARE" from the name of her child – "ROCK ELIZABETH AROKODARE" as the Claimant/Applicant is not the father of the child nor is he related to the Defendant/Respondent or the child in any way.
2. An Order of this Honourable Court perpetually restraining the Defendant/ Respondent from using the Claimant/Applicant's name – "ABIODUN AROKODARE" or "AROKODARE" as the surname of her child (ren) or as the father's name of her child(ren) and/or parading her child(ren) as ABIODUN AROKODARE's or AROKODARE's or as child(ren) of the Claimant/Applicant – "ABIODUN AROKODARE" or "AROKODARE" for any purpose and under any guise whatsoever.

3. And for such further or other order(s) as this honourable court may deem fit to make under the prevailing circumstances of this suit.

The application is supported by a 23-paragraph affidavit, sworn to by Vivian Abomah, of Counsel, with a bundle of documents marked as Exhibit AA1; and a Written Address.

The Defendant was served with the Originating Motion on the 13th of March 2025 but neither filed any processes nor appeared at the hearing of the suit.

CASE OF THE PARTIES

The Claimant is a retired accountant who resides in Abuja. Sometime in 2009, he met the Defendant in Ekiti State, and they dated for six years. Within the same period, the Defendant came over to Abuja where the Claimant meets her at No. 11 Casamance Street, Wuse Zone 3. In September 2018, the Defendant informed the Claimant that she was pregnant, but refused to submit to a DNA test, the Claimant's condition for accepting responsibility, so the Claimant cut off all contacts with her. When the Defendant gave birth in October 2019, she confessed and apologised to the Claimant that he was not the father of her child. However, sometime in 2023 the Defendant started claiming and parading the child as the daughter of the Claimant as a ploy to get money from the Claimant. That the Defendant sent text and audio messages through WhatsApp and Instagram to the wife and daughter of the Claimant threatening and claiming that the Claimant was the father of her child. The Claimant reported the threats and harassment to the Nigeria Police Force CIID, Investigation Department, Garki, Abuja, to protect his good name and reputation. In the course of police investigation, a DNA test was conducted at the Lagos State DNA and Forensic Centre at No. 43 Broad Street, Lagos. The police report and the DNA test result revealed that the Claimant was not the father of the Defendant's child. The police report, DNA test result and letter forwarding the same to the police are exhibited as Exhibit "AA1." Consequently, the Defendant apologised to the Claimant for accusing him wrongly and lying about the paternity of her child.

Additionally, it was discovered during investigation that the Defendant's child was named and registered with the National Population Commission as Rock Elizabeth Arokodare. The Claimant avers that he is not the father of the child and is not related to the child in any way.

SUBMISSION OF PARTIES

The Applicant raised a sole issue for determination, namely: Whether in the circumstances of this case, the court will grant the Claimant/Applicant's application considering that the Defendant/Respondent has admitted that the Claimant/Applicant is not the father of her child, coupled with the DNA test result which also proved that the Claimant/Applicant is not the father of the Defendant/Respondent's child.

Learned counsel submits that the Applicant has raised germane issues relating to the paternity of the child of the Defendant flowing from the police's investigation report and a DNA test result. That the Defendant has confessed and apologised to the Claimant for accusing him falsely after the close of police investigation. Counsel cites the cases of TONY ANOZIA v. MRS PATRICIA OKWUNWA NNANI & ANOR (2015) 8 NWLR Pt.1461, 241 at 256 para. H; and MOSES-TAIGA v. TAIGA (2005) EWCA Civ 1013, to explain the meaning and purpose of a DNA test, and submits that it is the court's accepted method of conclusive proof of paternity. That Section 7 of the Births, Deaths etc (Compulsory Registration) Act, 2004 requires the registration of the birth of every child in Nigeria. That the Defendant used the Claimant's name to register her child, and this constitutes a threat and the propensity to claim paternity responsibilities from the Claimant. That equity helps the vigilant, so the Claimant seeks the court's intervention to restrain the Defendant from making malicious claims against the Claimant by using his name as the father of her child.

DECISION

This application was commenced by an Originating Motion pursuant to Order 2 Rule 6 of the High Court of the Federal Capital Territory (Civil Procedure) Rules, 2018 which provides that "***Proceedings may be commenced by originating motion or petition where these Rules or any written law provides.***" I have observed that the Claimant has not referred the court to any specific Rules of this court or any extant law that allows the commencement of this case with an originating motion.

The general procedure for commencing a suit under Order 2 of the High Court of the Federal Capital Territory (Civil Procedure) Rules 2025 (same as the 2018 Rules) in the circumstances of each case as the rules prescribe, is

with any of the following: a writ of summons; originating summons; originating motion; or petition.

Order 2 Rule 6 under which this application was brought provides that ***“Proceedings may be commenced by originating motion or petition where these Rules or any written law provide.”***

Rule 6 does not by itself or independently authorise the use of an originating motion but subjects the permission for its use to the provisions of other specific rules of the court or any written law. The Applicant has not stated the specific rule or law under which this application was brought.

The Court of Appeal in the case of BORON OIL AND GAS LTD v. PETROMARINE NIG. LTD (2023) LPELR-61012 (CA) held at pp.42-43 E-A, that ***“An originating motion as a mode of initiating action in court is separate and distinct from other modes. An originating motion is used to initiate legal proceedings or application in court, often seeking a specific order or remedy from the court. It is commonly employed in matters such as enforcing constitutionally guaranteed fundamental rights, applications for judicial review, applications for injunctions or pre-emptive orders, or other types of non-contentious applications.”***

Notwithstanding the foregoing observation, it is my belief that in the instant case, the view of Belgore, JSC (as he then was) at p.204 F-H, in the case of **THE FEDERAL GOVERNMENT OF NIGERIA & ORS v. ZEBRA ENERGY LTD (2002) 18 NWLR Pt.798, 162** is instructive. His Lordship held that ***“Looking at the issues in the case right from Court of Appeal to this court, I cannot understand by any shred of imagination, how, the issue of what method was used to initiate the proceedings in the trial court arose. Procedure is a guide to smoothen passage of suit; to direct the parties what to do and to guide the court to arrive at the justice of a case... The court shall never be shackled by procedure; case is not made for procedure; it is the other way round. Once the procedure employed has brought into focus the issues the parties contest and there is no miscarriage of justice it will not matter that the procedure is not the correct one. Getting to the destination is what is important; it does not matter the means used.”***

See also **LADY LEDER BASILIA EKANEM & ORS v. THE REGISTERED TRUSTEES OF THE CHURCH OF CHRIST THE GOOD SHEPHERD & ORS (2023) 6 NWLR Pt.1879, 43** at p.69 E-H, where it was held that an action commenced on a wrong process does not ipso facto render it incompetent, and the court in the circumstances of the case may order pleadings if the materials facts involved are in serious and material dispute from the affidavit evidence placed before the court by the parties or likely to be in such dispute.

That having been said, in the interest of justice I shall consider this case on the processes as filed before this court.

What is in dispute from the issue raised by the Claimant and the processes filed is whether the Defendant can use the name Arokodare, which belongs to the Claimant, for her daughter, Rock Elizabeth Arokodare, whose paternity the Claimant disputes. In his evidence, the Claimant averred that the Defendant gave birth to a child in October 2019 and confessed and apologised that the Claimant was not the father of her child. That, however, subsequently the Defendant started claiming the child as his which prompted police investigation that, inter alia, revealed that the Defendant's child was named and registered with the National Population Commission as Rock Elizabeth Arokodare. That the Claimant is not the father of the child and is not related to her in any way.

As earlier observed, the Defendant did not file any counter affidavit to the averments of the Claimant. In the absence of any of the averments being controverted they are deemed established and proved, save for those that are otherwise inadmissible under the Evidence Act.

I believe a veritable place to start the consideration of the above stated issue is with the trite law that a legal right is correlative to a breach of duty owed to a person emanating from a contract or imposed by law. In other words, the law only protects and enforces a legal obligation created by law or contract which entitles another to protection from its breach. See the case of **THE SHELL PETROLEUM DEVELOPMENT COMPANY OF NIGERIA LTD & ORS. v. E.N. NAWKA (2003) LPELR-3206 (SC)** at p.14 F-G, where the Supreme Court held that, *"In private law, the jurisdiction of the court to grant declaration of right is predicated on the existence of a right. Legal right in private law, generally, attaches to property, and to the person. A third*

broad category is the right that arises by and from the agreement of the parties.”

The first question therefore is, does the law restrict anyone from using any name they desire? If the name is use simpliciter, I doubt if there are any legal restrictions placed on a person from using a name. It might be a different kettle of fish if the name specifically mentioned the child as the daughter of such and such a person. The Claimant may well have a legal right to restrict the Defendant from parading the child as his daughter, but whether he could stop her from using any name she pleases is a different matter entirely. Again, the Claimant might have a right to seek the court’s intervention to strike out his name as the father of the child if that was stated in the records of the National Population Commission, but that is not the case established here.

It is my view that no one has exclusive right to the use of a name. I also believe that the fact of being the father or the mother, or being related to a child is not the only consideration for bearing a particular name. Culturally in most parts of the world, a name, particularly the surname of a person often reflects the name of the person identified as the father. However, since this is not the only yardstick for having a name, it would be unconscionable for a court to restrict any person from adopting a name they wish to bear. A name by itself does not confer any benefit or ascription of paternity to a child, even where the inference is strong particularly in the present circumstance where there have been controversies about the paternity of the Respondent’s child. The court would need to determine the balance of the proprietary rights of the child to have a name against the right of the Claimant to object to his name being used for a child he was not responsible for conceiving.

In the case of **JACOB OBANDE AJENE v. COMFORT OGIRI AJENE & ANOR (2022) LPELR-57536 (CA)** where the issue of similarity of names came into focus, the Court of Appeal, at p.53 D – 54 E held that, ***“In my considered but humble view, anybody who fancies a name or title for whatever reason is free to adopt same...In OFFOBOCHE v. OFFOBOCHE (2006 13 NWLR (Pt.997) Page 298 at 304 para. E and 306 para. B, the Court held: No person, group of persons or family has a monopoly of names. Persons have unrestrained liberty to pick and choose names that please them. No legislation in Nigeria restricts a person to a fixed number of names. In effect, even if names are identical or same, no person in Nigeria has a***

legal right to restrain another person from answering or bearing those names. In ALLIANCE FOR DEMOCRACY v. FAYOSE & ORS (2005) 10 NWLR (Pt.932) 151 at 192-193 cited and relied upon by the lower court, per Nsofor JCA stated: ...Of what concern or to whom does it matter if A choses (sic) to be called or known by many; or very many names. I confess that I know of no legislation or a decree in Nigeria restricting any person(s) to a number of names he may be called or known by.” See also CHIEF AMUSA SAKA BANJOKO & ORS v. MR YEKINI ADEWALE SALAU OGUNLAJA & ANOR. (2013) LPELR-20373 (CA) at p.28-29 D-F.

I believe it is apposite for me to cite and analyse the OFFOBOCHE v. OFFOBOCHE case referred to in the two cases above.

In **DR. MATHIAS OKO OFFOBOCHE v. MR. CLETUS (CLAY) OKO OFFOBOCHE (2006) 13 NWLR Pt.997, 298**, where the issues are materially similar to the present case, the plaintiff therein sought the following reliefs at p.302 B-D:

“1. A declaration that the defendant is not the biological or foster or adopted or any son of the plaintiff.

2. A mandatory order directing the defendant to drop the name of the plaintiff, Oko Offoboche, Oko-Offoboche, Offoboche, from the defendant’s name within 48hours (forty eight hours) of the delivery of the judgment in this case.

3.An order of perpetual injunction restraining his privies, successors of the plaintiff, Oko Offoboche, etc from using or bearing the name Oko-Offoboche, Offoboche.

4. An order of perpetual injunction restraining the defendant from purporting or parading or holding out himself or representing himself as the son of the plaintiff.”

At the trial court, the defendant filed a preliminary objection on the grounds, inter alia, that the action was not justifiable as having disclosed no cause of action against the defendant.

The trial court ruled inter alia that: (see p.302 H)

“1. That the defendant is not the biological or foster or adopted or any son of the plaintiff.

2. The defendant is hereby restrained from parading himself as the son of the plaintiff."

The plaintiff appealed to the Court of Appeal raising the question whether the learned trial judge was right when he held that the defendant had the right to bear whatever name he chose to bear considering the facts and circumstances of the case.

The Court of Appeal at p.306 D-E held that: ***"The lower court in its wisdom identified reliefs (1) and (4) in paragraph 34 (supra) of the statement of claim which deal with paternity, and he rightly made pronouncements on them. I agree with the opinion of the lower court for refusing reliefs (2) and (3) because no person, group of persons or family has a monopoly of names. Persons have unrestrained liberty to pick and choose names that please them."***

I have not seen any justification from the circumstances of this case for a departure from the above decisions which I am bound by on the hallowed principle of stare decisis.

I therefore hold that the Claimant has failed to establish the law or legal authority which entitles him to the reliefs being claimed. The Claimant has also not established that, apart from the use of a name similar to his, the Defendant, in the circumstances, is using the name in a manner that affects his legal rights and for which the Court can grant the reliefs sought.

The second question is whether the Claimant has established entitlement to restrain the Defendant from parading her child, named Rock Elizabeth Arokodare, as the Claimant's?

With reference to the evidence of the Claimant showing that the Defendant paraded her child, Rock Elizabeth Arokodare, as the daughter of the Claimant, I make the following observations and findings.

In the first instance, the text and audio messages, averred to have been sent by the Defendant to the Claimant's wife and daughter, constitute documentary evidence by virtue of Section 258 (1) of the Evidence Act, 2011 (as amended). These have their specific method of proof under Section 88 of the Evidence Act which provides that: ***"Documents shall be proved by primary evidence except in the cases mentioned in this Act."***

Section 89 of the Evidence Act provides the exceptions. Particularly, S.89 (b) provides that: ***“Secondary evidence may be given of the existence, condition or contents of a document when - ... (b) the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest...”***

See the case of **CHRISTOPHER ONOCHIE & ORS v. OGBUESHI N. OREFOR ONOCHIE & ORS (2017) LPELR-42018 (CA)**, at p.40 E-F, where the Court of Appeal held that: ***“...I further take note of the provisions of Section 125 of the Evidence Act 2011 stating that ‘All facts, except the contents of documents, may be proved by oral evidence.’ That is without forgetting that Section 90 (1) (a) of the Evidence Act 2011 makes some exceptions, so to speak, to Section 125 and allows secondary evidence, including oral evidence, to be led of contents of documents.”***

It is to be noted that Exhibit AA1 in paragraph 4 (b) of the Police Investigation Report stated that the Defendant admitted to sending voice notes to the Claimant’s wife and daughter. Nonetheless, this is not enough to satisfy the exception as earlier provided. The admission contemplated must be in writing by the Defendant in this case, or her representative in interest; and no such admission was produced before this court.

However, these were not the only facts relied upon by the Claimant to prove that the Defendant claimed her child to be the biological daughter of the Claimant. By the totality of Exhibit AA1, the issue which prompted investigation by the police and recourse to DNA test was the allegation of dispute about the paternity of the Defendant’s child. Particularly the said Police Investigation Report dated 22nd November 2024 stated that DNA test was used to ***“establish the veracity or otherwise of her claim...and ascertain the paternity of the child.”***

See the case of **ADEBANJO OLAYINKA v. ADEBOLA ADEPARUSI & ANOR. (2011) LPELR-8691 (CA)** where the Court of Appeal held at pp.42-43 G-A, that ***“...if a party is claiming paternity it is trite that a court of law should be allowed to determine same on proof of evidence relating to paternity, which could only be done by referral for a DNA test of the parties involved. After such test the court has a duty to declare the actual father of the child in dispute in consonance with the evidence at its disposal.”***

By this token, that is the nature of dispute forming the basis of the police investigation, the Claimant has established that the Defendant paraded her child, Rock Elizabeth Arokodare as the biological daughter of the Claimant. On this basis therefore, the Defendant can be restrained from claiming or parading her child, named Rock Elizabeth Arokodare as the daughter of the Claimant.

In the final analysis, the Claimant's claim succeeds in part. Flowing from the sole issue for determination, it is my finding that from the totality of the evidence in this case, the Claimant, Abiodun Arokodare is not the biological father of the Respondent's child born on 3rd July 2019 and named Rock Elizabeth Arokodare. The Claimant is entitled therefore to an order of Court restraining the Defendant from claiming or parading her child, Rock Elizabeth Arokodare, as the daughter of the Claimant for any purpose, whatsoever.

Notwithstanding, the Claimant has not established his entitlement to an order of the Court compelling the Defendant to remove the name "Arokodare" from the name of her child, Rock Elizabeth Arokodare.

The judgment of this Court is therefore as follows:

1. The Court cannot compel the Defendant to remove the name Arokodare from the name of her child, Rock Elizabeth Arokodare. Relief number 1 therefore fails and is hereby refused and dismissed.
2. The Defendant is hereby restrained from parading her daughter Rock Elizabeth Arokodare as the biological daughter of the Claimant Abiodun Arokodare for any purpose or under any guise whatsoever.

This is the judgment of the Court.

HON. JUSTICE O. O. BAMODU, mni
(Presiding Judge)